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Of Attorneys for Claussen Oysters, LLC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re:

CLAUSEN OYSTERS, LLC

Debtor.

Case No. 23-60847-tmr11

DECLARATION OF SETH SILVERMAN
IN SUPPORT OF DEBTOR'S MOTION
FOR AUTHORITY TO OBTAIN CREDIT

I, Seth Silverman, declare as follows:

1. I am a manager of Clausen Oysters, LLC, the debtor in the above-captioned Chapter 11 bankruptcy case.
2. I am over 18 years of age. If I were called as a witness, I would testify to matters set forth herein from my own personal knowledge.
3. Debtor, Clausen Oysters, LLC ("Debtor") is an Oregon limited liability company. Debtor owns the real property at 66234 North Bay Road, North Bend, Oregon 97459 (the "**Property**"). Debtor is owned by Haynes Inlet, LLC, an Oregon limited liability company ("**Haynes**"). In addition to myself, Debtor has one other manager: Patrick Glennon.
4. The business Debtor operates was initially founded by Max and Lilli Clausen in 1985 as a sole proprietorship. The Clausens grew the business to be the largest oyster growing operation in Oregon. Max passed away, but Lilli continued to operate the business and

converted the business into a limited liability company—the Debtor—with Max’s three children holding minority membership interests in the company.

5. In 2016, the Clausen Family sold their membership interest in Clausen Oysters, LLC to Acacia Pacific Group, LLC (“**APG**”) for \$3,750,000. The terms of the sale were \$400,000 down from APG, with the remaining balance to be paid in monthly installments of \$30,000 until the seller note matured on January 1, 2021, at which time a balloon payment would be made. The purchase was secured by a Trust Deed and Security Agreement covering all the asserts of Clausen Oysters, LLC.

6. APG’s purchase agreement required APG to preserve the collateral and prevent waste. The documents also required APG to plant certain levels of oyster seed each year until the seller note was fully paid. The oyster inventory is one of Clausen Oysters, LLC’s most significant assets. Planting oyster seeds is required for the business to thrive because oysters do not reproduce naturally in Coos Bay. Instead, oysters are harvested on a three-year cycle. Without a regular seeding program, the business would die after three years due to lack of product to sell.

7. After the purchase, APG’s managers, Abell and Richards, made a series of missteps that damaged the business. The Clausen Family agreed to temporarily reduce the monthly payment requirement on the seller note, so that mounting payables could be paid down, and the business could be turned around. The Clausen Family urged Abell and Richards to step down as managers, but the managers refused to step down. When the temporary payment forbearance period expired, Clausen Oysters, LLC defaulted on the Clausen Family note.

8. To make matters worse, Abell and Richards drastically reduced the company’s oyster planting program throughout 2017 and most of 2018, resulting in less than half of the oyster seed plantings required to maintain the business’s inventory levels. Abell and Richards also failed to maintain the company equipment and had engaged in self-dealing by withdrawing company cash and milking company assets for their personal use. As a result of these issues, and

the default under the Clausen Family note, the Clausen Family initiated litigation and sought the appointment of a receiver.

9. After a receiver was appointed, the Clausen Family entered into a new agreement to sell Debtor's business and assets to Haynes. The sale closed on October 1, 2018. The purchase price under the agreement with Haynes was \$3,350,000, which was to be paid in monthly payments ranging from \$10,000 to \$15,000, with a balloon payment due at the maturity date on October 1, 2022.

10. Upon taking over from APG, the members of Haynes Inlet, LLC realized the extent of prior management's shortcomings, including the extent to which oysters were underplanted during 2016, 2017, and most of 2018. Because bottom culture oysters take up to three years to fully mature, the effects of the prior management's failure to re-plant oysters was felt most strongly in the period between 2019 and 2020. Also, the COVID-19 pandemic presented numerous supply chain issues, causing delays and shortages in oyster seed. These issues prevented Debtor from realizing profit levels available under normal circumstances.

11. After removing the APG management, Debtor and its current management corrected course toward industry-standard methods, such as obtaining the appropriate permits, and maintaining consistent planting practices. Due to the delay in grow time, the results of proper management techniques over the last several years are only now starting to be realized.

12. Debtor and Haynes made its payments to the Clausen Family, but, due to the circumstances described above, the company was unable to refinance the Clausen Family note before it matured in October of 2022. The Clausen Family initiated litigation to have a receiver appointed to take control of the Debtor's assets. Thereafter, Debtor filed this Chapter 11 case.

13. Since prior to the filing of the Debtor's bankruptcy case, I have been personally in charge of negotiating with potential lenders on behalf of the Debtor. I have worked with over a dozen lenders throughout this process, all of which offered significantly different terms for financing to pay off the Clausen Family debt and provide the Debtor with working capital. After

evaluating the different terms offered by various lenders, I initially narrowed the potential candidates down to two, and later down to one candidate, Newport Blue Impact, LP (“*Newport*”) which is offering better terms and a quick closing. Newport issued a Term Sheet, and I have been working with the lender to satisfy due diligence requirements. One of the last items that the Debtor and lender were waiting for was an appraisal of the Debtor’s real property. The appraisal finally arrived, and the lender has issued an updated term sheet dated September 20, 2023 (the “*Term Sheet*”) for a loan which will enable the Debtor to pay the Clausen Family the negotiated amount in the previously approved settlement agreement. A copy of the term sheet is attached hereto as Exhibit 1.

14. Debtor’s counsel has been in negotiations with counsel for the Clausen family, to obtain an extension of the payment deadline under the settlement agreement previously approved by the Court. The Clausen family has agreed to extend the deadline for payment to September 29, 2023, in exchange for Debtor’s agreement not to contest the Clausen Family’s choice of a receiver if and when appointment of a receiver is sought by the Clausen Family.

15. By obtaining the proposed financing, Debtor will be able to benefit from a significant discount from the Clausen Family, in an amount exceeding \$1,300,000. If Debtor is unable to obtain financing by September 29, 2023, Debtor will lose the discount.

16. Additionally, it is my understanding that the Clausen Family has already scheduled a hearing for the appointment of a receiver in Coos County Circuit Court. That hearing is scheduled to take place on October 2, 2023. If a receiver is appointed, the value of Debtor’s business will be significantly reduced, Debtor will lose control of its assets, and will be unable to propose or fund a plan to repay unsecured creditors. Additionally, many of Debtor’s longest tenured employees have communicated that they will resign from employment before experiencing yet another receivership for the business.

17. Debtor’s intentions in filing bankruptcy were to preserve the significant value of its business, which is just beginning to thrive after years of hardship. If the financing is

approved and the Clausen Family satisfied, Debtor anticipates filing a plan that will propose to repay unsecured creditors in full within 6 months after confirmation.

18. As stated above, prior to and after the Petition Date, I have been communicating with multiple potential lenders regarding the subject of obtaining financing to pay all of Debtor's debts. I've communicated with multiple potential lenders, and the lender that offered the best terms for financing is Newport. In addition to having the best loan terms, Newport also offered a quick closing timeline, which would enable Debtor to meet the Clausen Family's extended deadline.

19. Based on my discussions with Newport and its principals, I've concluded that obtaining financing from Newport is the only viable option for Debtor to obtain financing sufficient to enable the Debtor to propose a plan, repay all creditors, and preserve the going concern value of its business.

20. Without the proposed loan, I have concluded that Debtor will not be able to repay creditors, as Debtor's business and assets will be lost, and it is unlikely that the liquidation value of Debtor's assets will be sufficient to pay anyone other than the Clausen Family. It is my belief, after evaluating all available options, that obtaining a loan from Newport is the only viable way to repay creditors and retain the value of Debtor's assets and business.

21. Again, I have made numerous inquiries, and Debtor is not able to obtain financing on equal or more favorable terms than is being offered by Newport.

22. I believe that the proposed loan terms in the Term Sheet are fair and equitable for Debtor, and are in the best interest of the bankruptcy estate.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED September 21, 2023.

/s/ Seth Silverman

Seth Silverman, Declarant

EXHIBIT 1
TERM SHEET

NEWPORT CAPITAL

September 19, 2023

Robert Kerr
eQcho Capital
66234 N. Bay Road, North Bend, OR 97459 ("Subject Property")

Dear Robert,

Newport Capital is pleased to offer this non-binding term sheet to provide financing in the form of a First Deed of Trust on the Subject Property. The terms outlined herein are subject to Lender due diligence and closing requirements.

Subject Property:	66234 N. Bay Road, North Bend, OR 97459
Lender:	Newport Blue Impact, LP.
Borrower:	LLC entity is TBD.
Guarantors:	TBD.
Loan Type:	Commercial bridge loan.
Use Of Proceeds:	The proceeds from the Loan will be used to refinance the Subject Property. See Sources and Uses Statement as Exhibit A.
Gross Loan Amount:	Up to \$1,897,000. Not to exceed 70.0% of current valuation.
Initial Loan Advancement:	Up to \$1,897,000.
Initial Term:	12 months.
Interest Rate / Type:	13.00% / Fixed Rate.
Default Rate:	12.00%.
Lender Fee:	2.00% of gross loan amount.
eQcho Capital Fee:	2.00% of gross loan amount.
Interest Reserve:	\$123,305 (6 months).
Payments:	Interest only. Due on the first of each calendar month. On the maturity date or upon prepayment, Borrower shall pay the outstanding balance, including all principal and all accrued and unpaid interest.
Prepayment Penalty:	None.
Late Fees:	10.00% of the amount then due.
Security / Collateral:	First deed of trust on Subject Property. Full recourse to Guarantors.
Events Of Default:	10-day grace period for monetary defaults, non-monetary defaults are either immediate or subject to notice and cure periods detailed in the loan agreements.

100 Bayview Circle, Suite 2200, Newport Beach, CA 92660
www.newportcapital.com

TRANSACTION COSTS: Borrower is responsible for all transaction costs including legal counsel to Borrower, Lender, and Manager, which amount may be paid from the proceeds of the Loan.

DEPOSITS: \$5,000. This Term Sheet will be void if the deposit is not received by Lender by 5:00pm PST on the day which is two business days after the date of Borrower signing this Term Sheet.
Please make deposit by wire as follows:

Newport Blue Impact, LP
Domestic Wire/ACH Routing Number: 122287581
Bank Name: First Foundation Bank
18101 Von Karman Ave, Suite 700
Irvine, CA 92612

Account Number: 5805033875
Account Name: Newport Blue Impact, LP
100 Bayview Circle, Suite 2200
Newport Beach, CA 92660
+1 (949) 891 0272

Reference: "Term Sheet Deposit – Bay Rd 66234 N"

EXPIRATION DATE: This Term Sheet will expire if not accepted and returned to Lender by 5:00p.m. PST on the day which is five business days after the date of this Term Sheet.

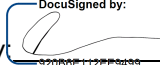
The undersigned acknowledges that [i] this Term Sheet does not constitute a commitment to enter into any transaction and [ii] the foregoing terms and conditions are acceptable subject to negotiation of the loan documents acceptable to Lender.

NEWPORT CAPITAL

By: _____
T.J. Coveyou

Date of Acceptance: _____

BORROWER

DocuSigned by:

By: _____
Authorized Signatory

9/19/2023
Date of Acceptance: _____

Exhibit A
Sources and Uses

Sources

Newport Loan - Net Proceeds	\$	1,677,000	67.9%
Newport Loan - Closing Fees and Reserves		220,000	8.9%
Total Newport Loan		1,897,000	76.8%
Sponsor Equity		573,000	23.2%
Equity/Other Sources		573,000	23.2%
Total Sources	\$	2,470,000	100.0%

Uses

Sell Carry Payoff	\$	2,250,000	91.1%
Total Debt/Liabilities Payoff		2,250,000	91.1%
Interest Reserves		123,305	5.0%
Newport Points		37,940	1.5%
eQcho Capital Points		37,940	1.5%
Newport Loan Fees		1,800	0.1%
Closing Costs Estimate		19,015	0.8%
Closing Fees and Reserves		220,000	8.9%
Total Uses	\$	2,470,000	100.0%

Exhibit B

Initial List of Diligence Items Required by Lender

- Background Checks
- Guarantor form
- Photo I.D.
- Entity Docs
- RPA
- Prelim
- Escrow Instruction
- Declarations
- Credit Authorization
- Insurance
- Comps
- Scope of work to be complete
- Appraisal

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF SETH SILVERMAN IN SUPPORT OF DEBTOR'S MOTION FOR AUTHORITY TO OBTAIN CREDIT on the following person(s) through operation of the Court's CM/ECF electronic filing system:

- GARRETT EGGEN geggen@sussmanshank.com, ecf.garrett.eggen@sussmanshank.com
- SUSAN S FORD sford@sussmanshank.com, jhume@sussmanshank.com, ecf.susan.ford@sussmanshank.com; susan-ford-1058@ecf.pacerpro.com
- Geoff Groshong trustee@groshonglaw.com, kalen@groshonglaw.com
- NICHOLAS J HENDERSON nhenderson@portlaw.com, skuger@portlaw.com; tsexton@portlaw.com; courtnotices@portlaw.com; hendersonnr86571@notify.bestcase.com
- TROY SEXTON tsexton@portlaw.com, nhenderson@portlaw.com, troy-sexton-4772@ecf.pacerpro.com, skuger@portlaw.com, courtnotices@portlaw.com
- THOMAS W STILLEY tstilley@sussmanshank.com, jhume@sussmanshank.com, ecf.thomas.stilley@sussmanshank.com; thomas-stilley-7866@ecf.pacerpro.com
- US Trustee, Eugene USTPRegion18.EG.ECF@usdoj.gov

DATED: September 21, 2023.

MOTSCHENBACHER & BLATTNER LLP

By: /s/ Nicholas J. Henderson
Nicholas J. Henderson, OSB #074027
Of Attorneys for Debtor